

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Kahului, Island of Maui, Hawaii),

LOOMIS, FARGO & CO.

Employer

and

INTERNATIONAL LONGSHORE &
WAREHOUSE UNION, LOCAL 142, AFL-CIO

Petitioner

37-RC-4087**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, 1/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons: 4/

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by September 10, 2004.

Dated August 27, 2004

at San Francisco, California

/s/ Robert H. Miller

- 1/ The parties' August 16, 2004, post-hearing stipulation regarding facts supporting the assertion of the Board's jurisdiction over the Employer is hereby received and entered into the record as Joint Exhibit 1.
- 2/ In their post-hearing stipulation described above, the parties stipulated that the Employer is a Texas corporation engaged in the business of providing armored transportation and ATM services. During the twelve-month period ending July 31, 2004, the Employer provided services valued in excess of \$50,000 to enterprises within the State of Hawaii, including Walmart, Costco and Lowe, each of which is directly engaged in interstate commerce. During the same period, the Employer purchased and received at its Maui facility, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Hawaii. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.
- 3/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 4/ By the instant petition, the Petitioner seeks to represent a unit comprised of armored service technicians and lead armored service technicians employed at the Employer's facility at Kahului on the Island of Maui, Hawaii; and excluding the operations manager, route supervisor, office clerical employees, confidential employees, managers, guards and supervisors as defined in the Act. The Employer contends that the petition must be dismissed because the petitioned-for employees are guards under the Act and, as the parties stipulated that the Petitioner admits non-guard employees to membership, Section 9(b)(3) of the Act bars the Petitioner from being certified as the bargaining representative of the employees in the petitioned-for unit. The Petitioner takes the contrary view. For the reasons discussed below, I find that the petitioned-for employees are statutory guards and will dismiss the petition filed herein.

The Employer's Operation. The Employer provides armored car services in Hawaii. It has branches located in Honolulu on the Island of Oahu, Kahului on the Island of Maui, at Hilo and Kona on the Big Island of Hawaii, and at Lihue on the Island of Kauai. The instant petition involves only employees at Kahului on the Island of Maui. The Employer's Hawaii operations are headed by General Manager Duane Pearson. About seventy percent of the Employer's business involves armored transportation and about thirty percent involves making cash replenishments and deposits for automated teller machines (ATMs). About ninety-five percent of the goods carried in the Employer's armored vehicles consist of currency, coins and negotiable checks.

The Employer employs approximately 15 armored service technicians at its Maui facility. The Employer also refers to these employees as drivers, custodians and guards, and they are rotated among these jobs. The principal job of these employees is to provide armored car services to safeguard and transport currency negotiable checks and other valuable items for the Employer's customers. Approximately six of the fifteen petitioned-for employees are involved in transporting currency and negotiable checks among three banks and approximately forty-five ATM sites on the Island of Maui. Their work involves not only transporting currency but also includes loading currency into ATMs, balancing out the ATMs, and removing residual currency from the ATMs and transporting it to the bank or the Employer's Honolulu facility for auditing. The armored service technicians also perform a basic clean up of the ATMs, stock ATM paper supplies, and non-mechanical maintenance of the ATMs, such as removing paper jams that they encounter. A separate company, unrelated to the Employer, handles the actual mechanical maintenance of the ATM machines.

The armored service technicians who service banks and ATMs also make night drops at ATMs inside banks. In such cases, they have access to the banks in order to enable them to access the ATMs. They are given codes to disable security alarm systems and they carry a "dual key" in some cases, which enables them to open a vault with the assistance of a bank employee. Keys to the financial institutions are maintained and controlled at the Employer's Maui facility and the armored service technicians check them in and out each day in order to perform their work. The Employer does not provide vault services on Maui, which means that it does not store secured items such as currency, within its own facility overnight.

The remaining nine armored service technicians provide armored car transport services safeguarding currency and other valuables for the Employer's customers such as retail stores, grocery stores and restaurants. Specifically, they pick up currency and coins from banks and transport it to the facilities of retail customers and then they pick up currency, checks and other valuable items from the facilities of retail customers and transport such items back to the banks.

Other duties performed by the armored service technicians include entering data at the end of the day into a computer for billing purposes and cleaning their vehicles.

In the course of their work, the armored service technicians use seven vehicles that are all armored plated with bullet resistant glass. The standard operating procedure is for one armored service technician to serve as a driver and the other to serve as the custodian who carries the currency to and from the ATM, bank or other customer facility where they are making a pick up or delivery. The driver always remains with the vehicle in a secured cabin

compartment. The record shows that the armored service technicians rotate between serving as the driver and the custodian on their routes. At times, three armored service technicians ride in the armored vehicle instead of two as when new employees are being trained on the job or when a third armored service technician is used to guard the custodian while he makes pick ups and deliveries of currency or other valuable items. In such cases, the third armored service technician is referred to as a "guard."

The record shows that the Employer attempts to limit the maximum amount of cash that these employees must carry to and from their armored vehicle and a customer's premises at any one time to \$250,000. Thus, the Employer requests its customers to package their items in sums of no more than this amount and notifies them that its armored service technicians can make multiple trips to carry currency if the customer has amounts exceeding \$250,000 to be transported.

All armored service technicians undergo extensive background checks that include fingerprinting, drug and alcohol testing and polygraph testing. All of the armored service technicians must be registered as guards with the State of Hawaii and licensed to carry weapons. All are uniformed and carry Smith and Wesson .38 caliber revolvers. According to the Employer's general manager, the armored service technicians are authorized to use their weapons in only situations where life is endangered. However, they are given ongoing training in the use of firearms and security procedures. They also carry two-way radios to enable them to stay in contact with each other and with their manager at all times. The Employer carries the bond for its employees rather than the armored service technicians being individually bonded.

The record reflects that the Employer provides similar armored services out of its Honolulu, Hilo/Kona and Kauai, facilities and that the Employer is party to three collective-bargaining agreements with Security, Police, Fire Professionals of America (SPFPA) Local 650 covering the armored service technicians at these facilities who perform the same duties as armored service technicians employed on Maui. These collective-bargaining agreements are each effective for the period from April 1, 2002, through March 30, 2005.

Analysis. As indicated above, the Petitioner seeks to represent a unit comprised of the Employer's armored service technicians employed to work on the Island of Maui. The Employer asserts that the petition must be dismissed because the employees in question are guards under the Act and the Petitioner admits non-guards to membership. For the reasons addressed below, I find that the petition herein must be dismissed because the petitioned-for employees are guards under the Act and the Petitioner admits non-guards to membership.

Section 9(b)(3) of the Act prohibits the Board from certifying any labor organization as the representative of a guard unit if it admits nonguard employees to membership or is directly or indirectly affiliated with any organization that admits nonguards to membership. That section defines a guard as "any individual employed . . . to enforce against employees and other persons rules to protect the property of the employer or to protect the safety of persons on the employer's premises." It is well settled that armored drivers who perform the types of services performed by the employees herein are deemed by the Board to be guards under the Act. *Armored Motor Service Co.*, 106 NLRB 1139 (1953); *Teamsters Local 639 (Dunbar Armored Express)*, 211 NLRB 687, 689 (1974); *Rapid Armored Corp.* 323 NLRB 709, 709-710 (1997).

The record reflects that the Employer's armored transport technicians are responsible for safeguarding and transporting currency, negotiable checks and other valuable items of the Employer's customers who include banks and other businesses. All of the armored service technicians wear uniforms and carry identification cards, are licensed to carry and carry weapons while working, and transport currency, negotiable checks and other valuable items in armored vehicles. Moreover, the Employer's armored service technicians are registered as guards with the State of Hawaii. They are without question guards within the meaning of Section 9(b)(3) of the Act. *Dunbar Armored Express*, *supra*; *Armored Motor Service Co.*, *supra*.

The Petitioner's reliance on *Brinks, Inc.*, 77 NLRB 1182 (1948), *Purolator Courier Corp.*, 300 NLRB 103 (1990) and *Pony Express Courier*, 310 NLRB 15 (1993), to support its argument that the armored transport technicians herein are not guards under the Act is misplaced. While it is true that in *Brinks, Inc.*, *supra*, the Board initially limited the definition of guards to the protection of money and valuables of the employer of the employees involved in the case, in *Armored Motor Service Co.*, 106 NLRB 1139 (1953), the Board overruled *Brinks* and extended the definition of guard to include armored drivers. See also *Teamsters Local 639 (Dunbar Armored Express)*, 211 NLRB 687 (1974). Later, in another *Brinks* case, *Brinks, Inc.*, 226 NLRB 1182 (1976), the Board extended the definition of guard even further to include unarmed courier drivers, stating that "the only issue presented is whether the couriers protect the property of the employer's customers." See also *MDS Courier Service*, 248 NLRB 1320 (1980). The Board continued to apply this standard in a line of *Purolator Courier* cases to determine whether *unarmed* courier drivers are statutory guards. See *Purolator Courier Corp.*, 268 NLRB 452 (1983); 266 NLRB 384 (1983); 265 NLRB 659 (1982); and 254 NLRB 599 (1981). In each of these cases, the Board found *unarmed* couriers to be guards within the meaning of Section 9(b)(3) of the Act, inasmuch as their duties involved "directly and substantially, the protection of valuable property of the employer's customers."

However, in *Purolator Courier Corp.*, 300 NLRB 812 (1990), the Board re-examined the standard articulated in the earlier cases and found that the *unarmed* couriers at issue were *not* statutory guards. In so doing, the Board noted that the couriers at issue received only minimal training and instruction regarding the protection and safety of customer property and were not trained or authorized to use physical force or weapons. The Board also noted that couriers' job duties merely required the pickup, transport, and delivery of customer property with minimal access to the customer's premises, that they were minimally accountable for the property involved, and that they were held out to the public by the employer as delivery persons, and not guards. Based on these factors, the Board concluded that the *unarmed* couriers were not guards as their basic function did not involve, directly and substantially, the protection of valuable property of the employer's customers. Similarly, in *Pony Express Courier Corp.*, 310 NLRB 102 (1993), the Board, relying on its recent decision in the *Purolator* case, found that the couriers at issue were not statutory guards inasmuch as their duties essentially consisted of the pickup, transport, and delivery of customer property with no particular intrinsic value. The Board also noted that the couriers at issue were directed, when faced with a perilous situation, to "remove" themselves and should they detect suspicious activity, they were instructed to call the police or a supervisor. See *Rapid Armored Corp.*, *supra*, 323 NLRB at 709. Thus, unlike the instant case, the cases relied on by the Petitioner do not involve armed personnel driving armored vehicles and handling large sums of money and other valuables for an employer's customers. Accordingly, they are not applicable to the instant case.

The Petitioner's arguments that the Employer did not begin formal weapons training until 2001, that its weapons training and testing may be less than the Petitioner believes they should be, and that the weapons carried by the Employer's armored transport technicians are carried for their deterrent effect, and are to be used only in the defense of life do not undermine my conclusion that the petitioned-for employees are statutory guards. Rather, as noted above, the record evidence establishes that the Employer's armored transport technicians are responsible for safeguarding and transporting currency, negotiable checks and other valuable items of the Employer's customers. Clearly, their basic function directly and substantially involves the protection of valuable property of the Employer's customers.

In view of the foregoing, I find that the Employer's armored transport technicians are guards within the meaning of the Act. As the parties stipulated that the Petitioner admits non-guard employees to membership, I find that the Petitioner is barred by Section 9(b)(3) of the Act from being certified as the representative of the Employer's guard employees. Accordingly, I will dismiss the petition filed herein.